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Docket No. F-8789

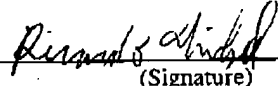
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Susumu KOBAYASHI
Serial No. : 10/550,128
Filed : October 18, 2005
For : RAIL FIXING PART STRUCTURE
Group Art Unit : 3637
Examiner : Hanh Van Tran
Confirmation No. : 1361
Customer No. : 000028107
Allowance Date :

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(Signature)

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**PETITION UNDER 37 C.F.R. 1.181(a)
TO INVOKE SUPERVISORY AUTHORITY**

r8789 per 181(a) premature finality (FC22) wpd

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Sir:

Applicant hereby petitions the Director to invoke supervisory authority pursuant to 37 CFR §1.181(a) in the above identified application to have the Examiner remove the finality of the Office Action of January 28, 2008.

MPER § 706.07(a) states that a second or subsequent action on the merits should not be made final when the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

No information disclosure statement was filed after the Amendment of November 1, 2007.

The changes to claim 1 in the Amendment of November 1, 2007 were done for the purposes of placing the claim in better form and did not necessitate a new ground of rejection. However, the Office Action of January 28, 2008 rejects claim 1 as obvious over U.S. Patent No. 6,217,139 (Henriott et al.) in view of U.S. Patent No. 6,010,200 (Hays). Henriott et al. was applied for the first time in the Office Action of January 28, 2008 and was, therefore, not previously utilized by the USPTO to reject claim 1 of the present application. The amendments to claim 1 which were made in the Amendment of November 1, 2007 are below:

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1. (Currently Amended) A rail fixing part structure, comprising:
a metal rail slidably supporting a drawer housed in a body, said drawer
comprising being synthetic resin and said rail comprising a flange; and
ribs, wherein
said metal rail is fixed to said drawer[[:]];
~~a flange provided at said rail;~~ said flange extends ~~extending~~ toward
said drawer; and
said drawer has said ribs ~~provided~~ at a side surface of said drawer,
said ribs vertically sandwiching said flange.

The changes to claim 1 were made to place the claim in better form and were not made to overcome the Examiner's rejection. In the Amendment of November 1, 2007, Applicant submitted that Hays (which was previously cited against claim 1 by itself) did not disclose the limitation of the ribs sandwiching the flange. This limitation was present before and after the amendments to claim 1 and, therefore, the use of a new reference is improper in a final office action.

Moreover, the change of the drawer "being resin" to "comprising resin" is merely formal, not substantive, and, consequently, is not a patentable difference over Hays which states that the drawers are made of resin. The change of "a flange provided at said rail" to "said rail comprising a flange" is merely formal, not substantive, and, consequently, is not a patentable difference since the

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Examiner stated in the Office Action of July 5, 2007 that Hays disclosed a rail with a flange. Changing "extending" to "extends" and changing "said metal rail fixed to said drawer" to "said metal rail is fixed to said drawer" are merely formalistic changes. Changing "ribs provided at a side surface of said drawer" to introducing the ribs earlier in the claim and reciting "said drawer has said ribs at a side surface of said drawer" are also merely formalistic changes.

Thus, the changes to claim 1 were done for formalistic reasons and did not include any new or modified limitations that would require new art to be applied against claim 1.

Applicant's attorney contacted the Examiner to withdraw the finality of the final Office Action and the Examiner suggested that a request to withdraw the finality of the Office Action of January 28, 2008 be filed.

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Accordingly, in light of the above, Applicant respectfully requests that the finality of the Office Action dated January 28, 2008 be withdrawn.

Respectfully submitted,

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